

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF VIRGINIA
3 Charlottesville Division

4 UNITED STATES OF AMERICA, Criminal No. 3:13cr00015
5 vs. Charlottesville, Virginia
6 GETTY ANDREW ROTHENBERG,
7 Defendant. January 17, 2014

8 TRANSCRIPT OF SENTENCING HEARING
9 BEFORE THE HONORABLE GLEN E. CONRAD
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the United States:

13 U.S. Attorney's Office
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16 For the Defendant:

17 Gentry Locke Rakes & Moore
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25 Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 THE COURT: Good morning.

2 I'll ask Ms. Moody to announce the style of
3 today's first case.

4 THE CLERK: United States of America vs.
5 Getty Andrew Rothenberg, Criminal Action 3:13cr15, for
6 sentencing.

7 THE COURT: The record of the Court reflects
8 that Mr. Rothenberg was previously before the Court and
9 made a plea of guilty to Count one of a criminal
10 information charging wire fraud, in violation of 18
11 U.S.C. Section 1343.

12 Following acceptance of the guilty plea, the
13 Court referred this matter to the United States
14 Probation Service for the development of a pre-sentence
15 report designed to help the Court get to know Mr.
16 Rothenberg better, to find out, as I always say, some of
17 the good things about his history, about his background
18 in the face of criminal allegations as set forth in the
19 information. Also, the pre-sentence report is designed
20 to help the Court decide whether to approve the plea
21 agreement pursuant to which the defendant made his plea
22 of guilty. And then finally, the Court utilizes the
23 pre-sentence report in an effort to properly apply the
24 Advisory Sentencing Guidelines that the Court must
25 consider before announcing some disposition.

1 The pre-sentence report has been completed
2 in Mr. Rothenberg's case. The Court has had the
3 opportunity to review it on several occasions now. I
4 suspect that counsel have as well.

5 Mr. Bondurant, I would imagine that you have
6 shared the report with the client and discussed it with
7 him before we convened today.

8 MR. BONDURANT: Yes, sir, I have.

9 THE COURT: Mr. Rothenberg, do you feel that
10 you've had an adequate opportunity to review the
11 pre-sentence report in your case and to discuss this
12 matter with your attorneys?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Good. Then we're ready to
15 proceed with the sentencing hearing.

16 You gentlemen may be seated.

17 The first order of business will be to
18 determine if either side has objections to the
19 pre-sentence report as written.

20 I would note at the beginning of this
21 discussion that since the pre-sentence report has been
22 completed, it is the Court's understanding that the
23 parties have met and agreed on certain of the facts that
24 might have otherwise been in dispute in this case and
25 would urge the Court to modify the pre-sentence report

1 pursuant to their agreement.

2 It's also the Court's understanding that the
3 parties have agreed to jointly recommend a sentence to
4 the Court. I would further report that at an earlier
5 hearing, the Court announced that it felt that it could
6 live with the party's sentencing recommendation.

7 So, in light of that and before I call upon
8 the parties for comments regarding the pre-sentence
9 report, it is the Court's belief that pursuant to the
10 agreement that I have referenced, the parties would now
11 have the Court modify the pre-sentence report to reflect
12 a total loss of between 1 million -- more than 1
13 million, but less than 2.5 million, rather than the loss
14 amount reflected in the pre-sentence report.

15 Further, the Court believes that the parties
16 have agreed that sentencing guideline paragraph 5K2.10,
17 as well as the general sentencing factors cited by
18 Congress under Section 3553(a) of Title 18, would
19 support both a departure and variance in this case to
20 bring the sentencing range to one within Zone C of the
21 advisory guideline sentencing table.

22 MR. HEAPHY: Your Honor, if I could just
23 make one clarification. I don't believe it's 5K2.10.
24 It's 5K2.13. It's the diminished capacity mitigation
25 that we believe is appropriate here. I don't think we

1 had any sort of agreement about victim's conduct. I
2 would ask the Court to more explicitly find 2.13 as
3 opposed to 2.10.

4 THE COURT: It was the Court's belief the
5 5K2.10 guideline was the appropriate one to support a
6 departure.

7 MR. BONDURANT: Yes, sir. That's the way we
8 understood it when the Court asked us to resolve the
9 case. That's what we've advised our client, too.

10 THE COURT: I think that's consistent with
11 my recollection as well, Mr. Heaphy.

12 MR. HEAPHY: Well, Your Honor, I'm just
13 referring to the agreement between the victim and the
14 defendant.

15 THE COURT: Let's look at it.

16 Again, I believe when I first made the
17 suggestion that the parties might want to consider this
18 issue, I specifically referenced the 5K2.10.

19 MR. HEAPHY: If I can have just a moment.

20 THE COURT: Sure.

21 (Counsel conferred).

22 I don't know how important it is, the more I
23 think about it. If everyone agrees the guideline
24 provisions justify a departure to Zone C, I don't know
25 if it's necessary to reference one or the other. We can

1 reference both.

2 MR. BONDURANT: When we went into the
3 negotiations, we relied on the Court saying the victim's
4 conduct would be a ground for variance and departure.
5 That's what we relied on in our negotiations.

6 THE COURT: The bottom line is the same, is
7 it not?

8 MR. BONDURANT: It's the same, but we would
9 like to have the Court rely on both or all three. We
10 gave three separate grounds for departure.

11 THE COURT: I'll do that. I'll just say that
12 after considering the arguments being made under various
13 guideline provisions and considering the sentencing
14 factors considered by Congress to be important for
15 imposition of criminal sentences in federal proceedings,
16 the Court believes that a departure based on a finding
17 of offense level 13 is appropriate, and effect such a
18 departure.

19 MR. BONDURANT: Thank you, Judge.

20 THE COURT: So, I would have the
21 pre-sentence report modified so as to reflect the
22 smaller loss amount and the fact that the evidence in
23 the case supports a departure and a variance to a
24 guideline total offense level of 13, bringing the matter
25 within Zone C of the sentencing table.

1 So, with those modifications having been
2 made, Mr. Heaphy, let me ask. Are there any additional
3 challenges to the fact findings of the probation officer
4 that you would note on behalf of the United States?

5 MR. HEAPHY: No, Your Honor.

6 THE COURT: Mr. Bondurant, any challenges to
7 the fact findings that you would voice on behalf of the
8 defendant?

9 MR. BONDURANT: No, Your Honor.

10 THE COURT: Regarding the proposed
11 application of the Advisory Sentencing Guidelines, as
12 modified based on the agreement that I have referenced
13 and in the Court's rulings as to grounds for a departure
14 and variance, Mr. Heaphy, is there any challenge by the
15 United States as to the proposed guideline application
16 that I've announced today?

17 MR. HEAPHY: No, Your Honor. I believe that
18 with the revised report, we're at a base offense level
19 20. We believe that a seven-level variance downward to
20 get us to a 13 is appropriate, for reasons that we'll
21 discuss. I believe that puts this within Zone C, which
22 makes Mr. Rothenberg eligible for the sentence that we
23 discussed.

24 THE COURT: A split sentence.

25 MR. HEAPHY: Yes.

1 THE COURT: Mr. Bondurant, any challenge to
2 the proposed guideline application that you would make
3 on behalf of the defendant?

4 MR. BONDURANT: No, Judge.

5 THE COURT: Mr. Rothenberg, let me address
6 you and tell you that as indicated, I have had the
7 opportunity to receive and review the pre-sentence
8 report in your case. I've also considered matters that
9 have been brought to the Court's attention by the
10 parties since the time that the pre-sentence report was
11 authored.

12 Based on all the information now available
13 to the Court, it is the Court's finding that the
14 pre-sentence report, especially as it discusses your
15 background, your history, your criminal record, the
16 offense conduct on this occasion, all of these things
17 are accurate. The only difference, the only
18 modification I would make in terms of the pre-sentence
19 report is to reflect a total loss of between 1 million
20 and 2.5 million. Other than that modification though,
21 the Court is going to adopt the pre-sentence report as
22 written. I think it does provide a very good and
23 helpful reference for the Court.

24 Furthermore, based on what has been said
25 about you in this report, based on what I've come to

1 understand about your background, your history, your
2 family circumstances, all of which are very positive and
3 favorable, and based on what I've come to understand
4 about the offense conduct and what occurred leading to
5 this criminal prosecution, it is the Court's belief that
6 the plea agreement that you reached with the government
7 is a fair one. I think it serves your interests in
8 determining exactly what conduct you'll be held
9 responsible for, what loss you'll be held accountable
10 for, and it serves the government's interests in
11 obtaining a conviction in this case without some very
12 expensive, drawn out, protracted prosecution. It serves
13 the interests of both sides.

14 Accordingly, the Court now adopts the plea
15 agreement and I will attempt to implement that plea
16 agreement in announcing a sentencing in just a moment.

17 Finally, the Court believes that the
18 proposed modified guideline application is correct.
19 Specifically, the Court believes that in your case, we
20 must start with an offense level of 20, based on the
21 amount of the loss, and that for a number of different
22 circumstances, in applying the factors referenced by
23 Congress in Section 3553(a) of Title 18, that a seven
24 offense level downward departure and variance is
25 appropriate in your case.

1 Applying that downward departure and
2 applying that downward variance, the Court believes that
3 in your case, your guidelines are appropriately
4 calculated, giving an offense level of 13 and a Criminal
5 History Category of I.

6 Those guideline provisions would result in a
7 sentencing recommendations of 12 to 18 months; a period
8 of supervised release to follow -- Mr. Sheffield, of
9 three years?

10 MR. SHEFFIELD: Two to five years.

11 THE COURT: Two to five years; a fine of
12 7500 to \$1 million; and in your case, sir, the parties
13 have agreed that you owe restitution in the amount of
14 one and a quarter million dollars to the victim of this
15 crime, as well as a special assessment of \$100.

16 I would also note that the Court's
17 assessment of your offense level and criminal history
18 are such as to put you within Zone C of the appropriate
19 sentencing table. That would result in the possibility
20 of a split sentence for any time ultimately imposed.

21 You gentlemen may be seated.

22 Mr. Bondurant, given these findings by the
23 Court, I ask, is there any evidence in mitigation that
24 you would have the Court consider this morning?

25 MR. BONDURANT: No, Your Honor.

1 THE COURT: Then I'll call upon the parties
2 for any comments that may need to be made regarding
3 their view of an appropriate disposition.

4 Mr. Heaphy, we'll start with you.

5 MR. HEAPHY: Thank you very much, Your
6 Honor. I don't have much to say given that we have a
7 joint recommendation to the Court of an 18-month split
8 sentence.

9 We're balancing here the seriousness of this
10 offense which, as detailed at the time of the guilty
11 plea, was significant. This was a long-running fraud of
12 someone of considerable means that Mr. Rothenberg
13 perpetrated in multiple forms over a long period of
14 time. So in our view, it is a very serious fraud case.
15 But there are factors here in mitigation.

16 Significantly, the victim's desire here is
17 that Mr. Rothenberg receive treatment as opposed to
18 incarceration and he's been clear about that from the
19 beginning. That is significant to us and one reason why
20 we're asking for a variance.

21 Mr. Rothenberg has also been cooperative.
22 He has met with us and provided information and admitted
23 his role in this fraud. That also, in our view,
24 justifies the variance.

25 Then finally, there are some mental health

1 issues that I think Mr. Bondurant cited as also
2 justifies a variance.

3 In our calculation then, Your Honor, of this
4 balance of the seriousness and the mitigation, the
5 victim's view and the cooperation, we think an 18-month
6 sentence is appropriate. It reflects the seriousness,
7 but it also gives Mr. Rothenberg substantial credit from
8 what he would otherwise have faced had this matter gone
9 to trial. So we specifically ask for 18 months imposed
10 as a split sentence; nine months of active incarceration
11 and nine months in community confinement.

12 THE COURT: Thank you.

13 Mr. Bondurant, what would you say on behalf
14 of the defendant?

15 MR. BONDURANT: There again, Your Honor, not
16 much since we have an agreed sentence in this case,
17 split sentence of nine months incarceration and nine
18 months home confinement.

19 As far as the fine goes, I would like to
20 speak to that a second. It's pretty clear Mr.
21 Rothenberg is without funds at this time. His wife just
22 gave birth to their second child last week. That's
23 creating both a financial and emotional toll. We would
24 ask the Court find he's incapable of paying a fine at
25 this time or at the very least at the lower end of the

1 fine guidelines. Otherwise, we believe this is a fair
2 result considering all the factors as mentioned by Mr.
3 Heaphy and the other factors the Court said it would
4 rely upon from the bench and we believe this is a fair
5 outcome for Mr. Rothenberg.

6 THE COURT: Yes, sir.

7 I wonder. I know that you've agreed to
8 restitution. Did you also agree to waive interest on
9 the amount that's due and owing?

10 MR. HEAPHY: I don't have any -- we did not,
11 Your Honor.

12 THE COURT: Do you have any strong feelings
13 about that, one way or the other?

14 MR. HEAPHY: I do not.

15 THE COURT: Normally, I would waive the
16 collection of interest.

17 MR. BONDURANT: We would, of course, ask for
18 that.

19 THE COURT: Mr. Rothenberg, let me ask if
20 you will join counsel there at the podium, please, at
21 this time.

22 Mr. Rothenberg, is there anything that you
23 would say on your own behalf before the Court pronounces
24 sentence?

25 THE DEFENDANT: I'm very sorry for not being

1 as diligent as I could be in my business conducts with
2 Mr. Tinsley. I was extremely careless in the way I went
3 about doing contractually things with Mr. Tinsley. I'm
4 very sorry. I committed wire fraud and I am accepting
5 the -- my responsibility for it.

6 Again, I'm extremely embarrassed to be here.
7 Very sorry to be here. I accept my punishment and I
8 look forward to getting past this and moving on and
9 being able to support my family and get past this most
10 embarrassing situation so I can get on with my life and
11 look forward to a very energetic life beyond this.

12 I'm determined to not only rebound, to make
13 an amazing entrance to the civilian life and really make
14 a positive impact for the rest of my life. I'm trying
15 to get the embarrassment behind me and let this
16 situation drift behind me so I can get on to a very
17 impressive life that will impact positively a lot of
18 people, going forward.

19 THE COURT: Yes, sir. Yes, sir. I think
20 that's well said. Your comments, I know, were
21 heartfelt.

22 Mr. Rothenberg, as you've recognized in your
23 statement and as has been pointed out on several
24 occasions during the prosecution of this matter, you did
25 commit a serious crime. You did commit mail fraud and

1 it resulted in a very substantial loss to the victim.
2 It was a very wrongful act. You stole money and you've
3 admitted responsibility for that. You've stood up and
4 said, yes, I'm responsible, I need to be punished, and I
5 think that all of this speaks in mitigation, though with
6 the understanding that there is still a very significant
7 criminal act for which you must now be punished.

8 When you announced through counsel and with
9 the concurrence of the United States Attorney at some
10 earlier time that you had reached a resolution of this
11 --

12 THE DEFENDANT: I'm sorry. We -- would you
13 repeat that?

14 THE COURT: Earlier this week when you
15 informed the Court that you and the United States
16 Attorney and your counsel had sat down and reached a
17 resolution of certain of the factual disputes in the
18 case, particularly the amount of loss and particularly
19 any dispute between you as to the punishment that you
20 should serve, I told you that what you were recommending
21 to the Court was within the range that the Court
22 considered to be an appropriate range for your sentence,
23 for your disposition, and I'm going to stand by that.
24 I'm going to adopt the recommendation. I'm going to
25 approve the recommendation that you and your attorney

1 and Mr. Heaphy have made and sentence you pursuant to
2 that agreement. It seems to me that the sentence that's
3 proposed serves all of the statutory objectives that the
4 Court must consider in a sentencing decision. I think it
5 does, the proposed sentence recognizes the seriousness
6 of the offense. I think it serves to punish you. I
7 think it serves to compensate the victim. It sends a
8 message. It deters others. It promotes respect for the
9 law. It's consistent with sentences imposed in like
10 situations both in this court and in other courts.

11 So, the bottom line is that the Court
12 believes the recommendation that you have made is well
13 advised.

14 The Court is going to depart in sentencing
15 you, based on the provisions of sentencing guideline
16 paragraphs 5K2.10 and 5K2.13. Also, I'm going to have
17 the sentencing order reflect that the sentence imposed
18 represents a variance based on the application of the
19 sentencing factors set forth in Section 3553(a) of Title
20 18.

21 I'm going to sentence you to incarceration
22 of 18 months, split between a period of actual
23 incarceration and a period of home confinement enforced
24 as a condition of your supervised release.

25 I'm going to sentence you to a period of

1 supervised release of three years.

2 The Court agrees that with the obligation
3 that you've undertaken to make restitution to the victim
4 to the tune of one and a quarter million dollars, that
5 it's not realistic for you to pay a fine on top of that.
6 I'm going to make a finding under the guideline scheme
7 that you're not capable of paying an additional sum by
8 way of a fine; vary from the guidelines and impose no
9 fine in connection with this conviction. I am required,
10 though, to impose the \$100 special assessment. It's
11 mandatory and required of all persons convicted of a
12 single felony offense in a United States District Court
13 proceeding.

14 So, Mr. Rothenberg, that is the proposed
15 sentencing structure in your case: 18 months, 9 of
16 which to be served by way of actual incarceration, 9 to
17 be served by way of home confinement; period of
18 supervised release of three years; no fine; restitution
19 in the amount of one and a quarter million dollars, with
20 no interest to accrue on any sums not paid immediately;
21 and then the \$100 special assessment.

22 Mr. Heaphy, does the United States challenge
23 the legality or propriety of the proposed sentence?

24 MR. HEAPHY: No, Your Honor.

25 THE COURT: Mr. Bondurant, does the

1 defendant challenge the legality or propriety of the
2 proposed sentence?

3 MR. BONDURANT: No, Your Honor.

4 May I have one moment?

5 THE COURT: Sure.

6 (Mr. Bondurant conferred with the
7 defendant).

8 MR. BONDURANT: I'm sorry, Judge. Go ahead.

9 (The defendant conferred with counsel).

10 THE COURT: That will be the sentence
11 imposed, Mr. Rothenberg. In the next several days, the
12 Court will enter a final judgment and commitment order
13 in your case that will read in pertinent part as
14 follows: Pursuant to the Sentencing Reform Act of 1984
15 and having considered the factors noted in 18 U.S.C.
16 Section 3553(a), and after having consulted the Advisory
17 Sentencing Guidelines, it is the judgment of the Court
18 that the defendant, Getty Andrew Rothenberg, is hereby
19 committed to the custody of the Bureau of Prisons, to be
20 imprisoned for a total term of 18 months. The term of
21 imprisonment will be split between actual incarceration
22 to the tune of nine months and a period of home
23 confinement, home detention, for a period of nine
24 months.

25 Following the period of actual

1 incarceration, the nine-month period, you'll be on
2 supervised release for a period of three years. There
3 will be conditions attached to the period of supervised
4 release. I'm going to undertake to announce the more
5 important of these conditions at this time.

6 It will be necessary when you're released
7 from prison that you report to the United States
8 Probation Service in the district in which you propose
9 to live within 72 hours of the time of your release.

10 Once you're established on supervision, it
11 will be necessary that you comply with a number of
12 mandatory, standard and special conditions of
13 supervision.

14 By way of mandatory conditions, I will
15 require that you not commit another federal, state or
16 local crime; that you not possess or use a controlled
17 substance; that you submit to regular drug testing as
18 administered by the probation officer to make sure that
19 you're free of drug use; that you not possess a firearm,
20 ammunition, destructive device or any other dangerous
21 weapon; and that you cooperate in the collection of a
22 DNA sample.

23 Now, in terms of the standard conditions,
24 I'm not going to read all those. It's a lengthy list.
25 You'll forget them. I would, at this time, anyway.

1 You'll be given a written list of standard conditions
2 when you're taken up on supervision. The more important
3 of those conditions require that you remain within
4 regular contact with the probation officer and that you
5 notify the probation officer of relevant changes of
6 circumstance in your situation; new home, new job, new
7 family arrangements, whatever. The probation officer
8 should be kept advised of all significant changes in
9 your life.

10 Then by way of special conditions, I am
11 going to require that you serve nine months under our
12 location monitoring program, nine months home detention,
13 and that you abide by all the program requirements. It
14 will be necessary -- well, I'm going to leave it to the
15 discretion of the probation officer to decide if you
16 require electronic monitoring in order to enforce your
17 compliance with the conditions of the location
18 monitoring program. That will be discretionary with the
19 probation officer.

20 In terms of the restrictions, in terms of
21 what you'll be prohibited from doing, you're restricted
22 to your residence at all times during this nine-month
23 period except for employment, education, religious
24 services, medical visits, substance abuse or mental
25 health treatment, attorney visits, court appearances,

1 Court-ordered obligations or any other activities that
2 are approved by the probation officer. So except for
3 those exceptional visits, those exceptional
4 circumstances, it will be necessary that you stay at
5 home for the nine-month period. You will be, though,
6 authorized to work if you're able to have regular
7 employment.

8 Now, there's some thought that you might
9 benefit from mental health treatment. I don't know
10 about that. We're going to wait and see about your
11 needs when you're released from prison. The probation
12 officer will undertake to evaluate you at that time. If
13 it's well advised, we'll require that you participate in
14 a program of mental health treatment as directed by the
15 Court, with the assistance of the probation officer,
16 until such time as you've complied with all the
17 requirements of that program. We'll make that call
18 later. If we feel that you need it, then we'll require
19 it as a condition of supervised release.

20 Also by way of special conditions, I'll
21 require that you provide the probation officer with
22 access to any requested financial information; that you
23 not incur new credit charges or open additional lines of
24 credit without the approval of the probation officer.

25 I'm also going to require at the time of

1 your release from prison that the probation officer
2 evaluate you for potential substance abuse treatment. I
3 don't know that that will be necessary. We'll decide
4 then. If it's determined that you would benefit from
5 substance abuse treatment, we'll identify a program that
6 suits your needs and require you to participate in that
7 as well. If it is required, it will be necessary that
8 you fully comply with the requirements of that program
9 as a condition of supervised release.

10 I'll require that you reside in a residence
11 free of firearms, ammunition, destructive devices and
12 dangerous weapons and that you submit to warrantless
13 search and seizure of person and property, as directed
14 by the probation officer, to make sure that you're free
15 of contraband during this period of your supervision.

16 Now, in terms of your financial obligations,
17 the Court has ruled that you do not have the capacity to
18 pay a fine. I'm varying from the guidelines and
19 ordering that no fine be collected from you.

20 The Court is going to order, pursuant to
21 your agreement with the government and the defendant,
22 that you make restitution to the victim of this crime in
23 the amount of \$1.25 million. I'm also going to require
24 that you pay the special assessment of \$100.

25 The Court will order that interest on the

1 1.25 million is waived.

2 Since the time that you've reached an
3 agreement on the restitution, more time has passed than
4 can be accommodated by the agreement that you've
5 reached, so is there some new time frame over which you
6 anticipate Mr. Rothenberg will pay restitution,
7 gentlemen?

8 MR. BONDURANT: I've actually talked to Mr.
9 Treakle. He and I will sit down and come up with a new
10 timeline and we'll let the Court know when we do that.

11 THE COURT: Can you do so soon, because it
12 needs to be reflected in the final judgment order?

13 MR. BONDURANT: We'll do it the first of the
14 week.

15 THE COURT: So, restitution, one and a
16 quarter million dollars.

17 Having considered your ability to pay this
18 sum, the Court will order that you discharge your
19 financial obligations in the following fashion. The
20 \$100 special assessment should be paid today. To the
21 extent it cannot be paid today, we'll let you pay it
22 within 60 days.

23 As to the restitution, it is contemplated
24 that you will transfer your interest in the Towne and
25 Country and Cowboy Holding Companies to the victim,

1 with the understanding that the parties have agreed that
2 these assets carry a value of \$200,000.

3 You will also pay the victim \$100,000 in
4 cash, 30,000 of which will be paid immediately and the
5 remaining payments of 35,000 to be made at dates
6 certain, to be provided to the Court after consultation
7 with the victim's counsel and your attorney.

8 Then as to the balance, the Court will order
9 that you pay the victim 20 percent of your monthly gross
10 income or \$100 per month, whichever is greater, to
11 commence 60 days after release from imprisonment.

12 Are there any other sentencing provisions
13 that the United States would recommend, Mr. Heaphy?

14 MR. HEAPHY: I don't believe so, no, Your
15 Honor.

16 THE COURT: Mr. Sheffield, anything else you
17 can think of that should be done in Mr. Rothenberg's
18 case?

19 MR. SHEFFIELD: Your Honor, the only
20 recommendation I would have is for him to be evaluated
21 for mental health issues while he's incarcerated, should
22 he need treatment.

23 THE COURT: I think they'll do that and
24 you'll be armed with that information when he's released
25 and you can decide at that point, after you and I talk,

1 as to whether or not anything else is necessary.

2 MR. SHEFFIELD: Yes, sir.

3 THE COURT: Mr. Bondurant, any challenge to
4 the conditions announced, any additional conditions
5 you'd have the Court consider, any question as to what's
6 necessary for compliance?

7 MR. BONDURANT: No, Your Honor.

8 THE COURT: Do you have a place of
9 incarceration in mind? With nine months, he's not going
10 to have too much by way of choice, but I'll make any
11 recommendation that you want me to.

12 MR. BONDURANT: Yes, sir. We'd like to ask
13 for the satellite camp within Petersburg. It's within
14 close range of his home in Richmond and he just had a
15 new child.

16 THE COURT: We'll make a recommendation.

17 MR. BONDURANT: I'd also ask he be allowed
18 to self-report, March 1st. I've spoken to Mr. Heaphy. I
19 don't believe there's an objection to that.

20 MR. HEAPHY: I think that's a BOP decision
21 and I don't have any problem with it.

22 THE COURT: You don't have any problem with
23 him self-reporting.

24 The date, though, is something neither one
25 of us controls.

1 We'll have the Court order reflect that Mr.
2 Rothenberg will be able to self-report.

3 Sir, it will be necessary for you to comply
4 with the instructions given to you by the Marshal
5 Service. The Marshal Service will contact you and tell
6 you when and where you're expected to report. Be sure
7 you do so on time and I'll have the Court order reflect
8 that we don't contemplate that you'll be required to
9 report prior to March 1, 2014. It will be some time
10 after that.

11 Now, Mr. Rothenberg, I take to heart the
12 things that you said when you made your statement a few
13 moments ago. You want to get about the process of
14 putting this behind you and rebuilding your life. I
15 think that this sentence is conducive to that course of
16 action. You're going to serve a short period of
17 incarceration, though I think it's a period of
18 incarceration that meets all the statutory requirements.
19 I think it serves all the elements Congress has
20 considered to be important for the Court to evaluate in
21 terms of criminal dispositions. But it's a sentence
22 that's not so long as to prevent you from attaining
23 these goals that you've expressed, these goals you've
24 set out for yourself.

25 My hope is that you'll be able to serve this

1 time without incident, that you'll do well on supervised
2 release and that you'll be very successful in building a
3 new life for your wife and family, in the years to come.
4 Based on what I've come to learn about you, what has
5 been said about you in the pre-sentence report, it seems
6 that this is a very realistic goal and I'm convinced
7 that you'll achieve it.

8 Mr. Rothenberg, you have waived the right to
9 appeal your sentence by virtue of your plea agreement
10 and that waiver is binding unless the sentence exceeds
11 the statutory maximum or is based on some
12 constitutionally impermissible factor. If you undertake
13 to appeal despite your waiver, you may lose the benefits
14 of your plea agreement.

15 To the extent a right of appeal does exist,
16 I tell you a person unable to pay the cost of appeal may
17 apply for leave to appeal without pre-payment of that
18 cost.

19 Any notice of appeal must be filed within
20 14 days of the date of entry of judgment of conviction
21 or within 14 days of a notice of appeal filed by the
22 United States.

23 If requested, the Clerk of Court will
24 prepare and file a notice of appeal on your behalf.

25 Good luck to you, sir. I hope this time

1 passes quickly for you. As I say, I hope you're
2 successful in getting on with the rest of your life and
3 building a new life for your family and yourself.

4 Good luck to you.

5 THE DEFENDANT: Thank you.

6 THE COURT: Thank you, gentlemen. Good to
7 see you all here. I appreciate your help and input.

8 If there's nothing further, we'll ask the
9 Marshal to declare the Court in recess until return of
10 Court.

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13

14 "I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled
16 matter.

17

18

19 /s/ Sonia Ferris

January 31, 2014"

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